Supreme Court, U.S.
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No. 96-1272

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

LEONARD R. KAHN,

Petitioner,

v.

EMERSON ELECTRIC COMPANY, HAZELTINE CORPORATION AND MOTOROLA, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

SUPPLEMENTAL BRIEF OF PETITIONER

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INTRODUCTION

The Petitioner filed a Reply Brief on March 24, 1997 and he understands that on that same day the Supreme Court granted certiorari in the Baker v. General Motors suit, Petition No. 96-653. The Petitioner first learned of the Supreme Court's Baker grant from an article in the Wall Street Journal of March 25, 1997, page B16, entitled "Justices to Hear Case on GM Settlement."

SIMILARITY OF SETTLEMENT COVENANTS

While the questions raised in the instant case are unrelated to the Baker Question re "full faith and credit," the 1992 "Settlement Agreement" (A2351), required that Hazeltine discontinue providing any assistance to Kahn in any litigation. This included assistance from engineers and lawyers employed by Hazeltine who, prior to 1992, assisted Kahn in the preparation of his patent infringement case against General Motors, Kahn v. General Motors, 88 Civ. 2982. Some of these individuals were also to act as expert engineering witnesses.[1] In the Baker case, Mr. Elwell's settlement agreement also precluded his acting as an expert in possible future litigation.

Actually, the instant case provides a broadening of the issue raised in the Baker case wherein it is argued that:

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[1]In describing the then secret Settlement Agreement (A2351) in Hazeltine's February 3, 1992 letter to Kahn, the General Counsel stated: "Hazeltine, HRi and I (as an employee of Hazeltine) cannot voluntarily aid, assist or fund you or KCI in your pending suit against General Motors..." (Exh. 2 of Complaint) **Please note that only Kahn's own trade secrets were to be involved in the testimony and that none of Motorola's secrets or privileges were at risk.**

> ..wrongdoers with a blueprint for purchasing the silence of potentially vital witnesses, [are] in violation of the ancient maxim that the public has a right to every man's evidence. (Page 11 of Baker Petition)

The purchase of silence in the instant case is even more reprehensible as it was done in specific litigation as part of on-going plan to destroy competition; no accident, plain wilful destruction of competition.

Thus, the instant Petition raises a question beyond whether any agreement to interfere with the obtaining of testimony should be deemed unenforceable as against public policy. It raises the question of whether a firm should be permitted to purchase silence in the perpetration of an illegal act to destroy competition in violation of the Sherman Act. Such acts present a profound threat to the judicial system.

ALTERNATIVE RELIEF REQUESTED

The Petitioner respectfully requests that the Court consolidate hearing of his appeal with Baker and grant certiorari on the basis that his case could provide means for further elaborating the expected teachings of the Baker decision. Alternatively, it is respectfully requested that the Court delay the determination of his Petition until the Baker v General Motors appeal is decided so that it also controls the instant Petition and any instructions the Court may issue in regard to the requested Remand to The Federal Circuit.

Dated: March 27, 1997

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